

Chapter 3

Indiana Library Laws and Other Laws Affecting Libraries

Indiana public libraries must follow all applicable state and federal laws.

Indiana public libraries are municipal corporations (units of local government) per IC 36-12-1-5. The **Indiana Code (IC)** has a chapter dedicated to public libraries in Indiana, **IC 36-12** <http://www.in.gov/legislative/ic/code/title36/ar12/>. This is commonly referred to as the “**Library Law**”. Indiana public library directors, staff, and trustees need to be very familiar with this section of the **Indiana Code**.

Indiana public libraries must also be familiar with the **Indiana Administrative Code (IAC) 590**, www.in.gov/legislative/iac/title590.html, which lists the public library administrative rules that libraries must follow, including certification and public library standards.

Other laws that must be followed are listed in the **Indiana Code** and are followed by all political subdivisions in Indiana. These include, but are not limited to:

- public purchasing
- public works
- Indiana Open Door law
- Access to Public Records Act
- bonding
- real property
- building and fire codes
- budgeting

There are also federal laws that must be followed such as:

- Family and Medical Leave Act <http://www.dol.gov/whd/fmla/index.htm>
- Americans with Disabilities Act, <http://www.usdoj.gov/crt/ada/adahom1.htm>
- Fair Labor Standards Act, <http://www.dol.gov/dol/compliance/comp-flsa.htm>
- Equal Employment Opportunity Act, <http://www.eeoc.gov/laws/index.cfm>
<http://www.dol.gov/dol/topic/discrimination/index.htm>

When there is a legal question concerning laws the library must follow, **your library attorney should be contacted**. State Board of Accounts will accept the opinion of your library attorney, when that opinion is in writing from the attorney and not in direct conflict with the law.

The Indiana State Library has hired a lawyer to interpret Indiana law as it relates to libraries; however, each library may still want to have and use their own attorney for the final word on legal issues.

Indiana Open Door Law (Ind. Code 5-14-1.5)

The Open Door Law ("ODL"), originally passed by the Indiana General Assembly in 1977, was enacted to permit the citizens of Indiana access to meetings held by public agencies. By providing the public with an opportunity to attend and observe meetings, the public may witness government in action and more fully participate in the governmental process.

Indiana Access to Public Records Act (Ind. Code 5-14-3)

The Access to Public Records Act ("APRA"), originally passed by the Indiana General Assembly in 1983, was enacted to permit the citizens of Indiana broad and easy access to public records. By providing the public with the opportunity to review and copy public records, the APRA gives individuals the opportunity to obtain information relating to their government and to more fully participate in the governmental process.

The Handbook on Indiana's Public Access Laws sets forth the basic elements of the Open Door Law and the Access to Public Records Act and also provides answers to commonly asked questions. In order to find answers to more specific questions, please consult the provisions of the Indiana Code.

The Handbook on Indiana's Public Access Laws may be found on the Internet at http://www.in.gov/pac/files/pac_handbook.pdf

The State has a Public Access Counselor, who is available to answer questions about the Open Door Law.

Public Access Counselor
Phone: 317-233-9435 or 1-800-228-6013
Fax: 317-233-3091
<http://www.in.gov/pac/>

Past advisory opinions can also be found on the web at <http://www.in.gov/pac/2330.htm>

Americans with Disabilities Act (ADA)

<http://www.usdoj.gov/crt/ada/adahom1.htm>

The intent of the law is to provide the person with a disability equal access to library facilities, information, computer technology, programs, services, and other resources.

The Americans with Disabilities Act (ADA) was passed July 26, 1990 as Public Law 101-336 (42 U.S.C. Sec. 12101 et seq). The ADA was enacted to create a balance between the reasonable accommodation of citizens' needs and the capacity of private and public entities to respond. It is not an affirmative action law but is intended to eliminate discrimination and level the playing field for disabled individuals.

The Americans with Disabilities Act extends civil rights protection to people with disabilities. These rights include equal access to employment, public services, public accommodations provided by public and private entities, transportation, and telecommunications resources.

The law is comprised of five titles with Titles I and II being the primary sections that affect libraries.

Title I requires employers to provide qualified individuals with disabilities an equal opportunity to benefit from the full range of employment-related opportunities available to others. For example, it prohibits discrimination in recruitment, hiring, promotions, training, pay, social activities, and other privileges of employment. It restricts questions that can be asked about an applicant's disability before a job offer is made, and it requires that employers make reasonable accommodation to the known physical or mental limitations of otherwise qualified individuals with disabilities, unless it results in undue hardship.

Title II requires that State and local governments give people with disabilities an equal opportunity to benefit from all of their programs, services, and activities.

State and local governments are required to follow specific architectural standards in the new construction and alteration of their buildings. They also must relocate programs or otherwise provide access in inaccessible older buildings, and communicate effectively with people who have hearing, vision, or speech disabilities.

Public entities are not required to take actions that would result in undue financial and administrative burdens. They are required to make reasonable modifications to policies, practices, and procedures where necessary to avoid discrimination, unless they can demonstrate that doing so would fundamentally alter the nature of the service, program, or activity being provided.

ADA Home Page (for more information and technical assistance)

<http://www.ada.gov/>

Sales (Library / Friends Group)

According to **IC 36-12-3-5**, the library board may sell, exchange, or otherwise dispose of real property no longer needed for library purposes in accordance with IC 36-1-11.

The library board may transfer personal property no longer needed for library purposes for no compensation or a nominal fee to an Indiana nonprofit library organization that is (1) tax exempt, and (2) organized and operated for the exclusive benefit of the library disposing of the property, without complying with IC 36-1-11. (Friend's group)

The library board may accept gifts of real or personal property and hold, mortgage, lease, or sell the property as directed by the terms of the grant, gift, bequest, or devise, when the action is in the interest of the public library.

In order to be eligible to receive personal property from the library, the Friend's of the Library group must:

- (a) be registered with the Indiana Secretary of State as a nonprofit corporation;
- (b) obtain Employee Identification Number (EIN) (even if there will be no employees);
- (c) obtain tax-exempt status under Internal Revenue Code Section 501(c);
- (d) obtain state sales tax exemption;
- (e) apply to the Indiana Department of Revenue (IDOR) using Form BT-1 for a sales tax ID number if the Friends will have employees or sell tangible goods for more than thirty (30) days.

A Friends group will need to report to IDOR annually, quarterly or monthly depending on how much sales tax the group estimates on the BT-1 that it will collect. Generally, a 12-month/year business operation will report and pay sales tax monthly.

Sales of merchandise by a Library See Sales Tax Bulletin #4 (link provided below)

Sales by state and local agencies are tax exempt unless the sale involves a "proprietary" (nontraditional) activity. According to IDOR, "an activity is proprietary when it is not necessary in the performance of a library's governmental function of lending books, providing reference materials, providing access to the internet...etc." and when it is an activity competing with the private sector.

According to IDOR, examples of taxable sales are sales of USB drives, book bags or book marks, sales of books if the books were purchased for resale and not for the library's exempt function of loaning books to patrons, etc.

According to IDOR, examples of non-taxable "sales" are library card fees, debt collection fees, printing and copying fees, penalties and fines, sales of books originally purchased and used by the library for lending to patrons, etc.

Sales by the Friend's Group – carried on fewer than 31 days in one calendar year

See Sales Tax Bulletin #10 (link provided below)

"Sales of tangible personal property by qualified nonprofit organizations carried on for a total of not more than thirty (30) days in a calendar year and engaged in as a fund raising activity to raise funds to further the qualified nonprofit purposes of the organization are exempt from sales tax"

If a Friends group sells books or other items less than thirty-one days in a calendar year, it is exempt from charging sales tax. Assume that a Friends group is selling tangible personal property inside the library and the estimated length of sales days is less than 31 in the calendar year. If the group was to leave the premises for a lunch break and left a sign instructing a patron to take the merchandise to the library's check-out desk to make the purchase, the library would not collect sales tax. According to the IDOR, the library would be assisting the nonprofit in the sales of the nonprofit's merchandise and thus, would not need to collect sales tax.

Sales by the Friend's Group - carried on more than 30 days in a calendar year

See Sales Tax Bulletin #10 (link provided below)

"If an organization conducts sales or fund raising activities during thirty-one (31) or more days in a calendar year (not necessarily consecutive), it is a retail merchant and must {charge}, collect {and report} sales tax on all sales made during the calendar year." Similarly, if the library was assisting the friends group with its sales, the library also would collect the tax.

Resources for additional information:

Sales Tax Bulletin #4 Sales to and by Indiana State and Local Governments and the United States Government and Its Agencies <http://www.in.gov/dor/reference/bulletins/sales/pdf/sib04.pdf>

Sales Tax Bulletin #10 Application of Sales Tax to Nonprofit Organizations
<http://www.in.gov/dor/reference/bulletins/sales/pdf/sib10.pdf>

Accounting and Uniform Compliance Guidelines Manual for Public Libraries (Ch. 13)
http://www.in.gov/sboa/files/lib2010_013.pdf

Indiana Department of Revenue (IDOR)

<http://www.in.gov/dor/3325.htm>

Sales Tax: (317) 233-4015

Please check with IDOR or your library's attorney if further information is needed.

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Policies and Plans Required by Law

Included in this chapter are the policies and plans public libraries must have in place. The Library Development Office has copies of by-laws and policies from other public libraries if you are interested in seeing sample policies. The Library Development Office has also created a template for board by-laws. Also consult Chapter 2 Public Library Standards.

When you develop a new policy or update an old policy send the Indiana State Library a copy for the vertical file or send us the Internet address so that we may create a link to it from State Library's Web site.

For examples of **policies** from *Indiana public libraries*, go to the following link on the State Library's Internet site:

<http://www.in.gov/library/3290.htm>

For examples of **plans** from *Indiana public libraries*, go to the following link on the State Library's Web site:

<http://www.in.gov/library/3308.htm>

Policies/plans needed to fulfill the *minimum requirements*:

Library Board By-laws

- Outlines purpose and operational procedures and addresses conflicts of interest issues and nepotism
- Reviewed at least every three (3) years
- Copy submitted to Indiana State Library
- Amendments submitted each year with annual report

Long-Range Plan

- Covers between three (3) to five (5) years of service
- States community needs and goals
- Contains measurable objectives and service responses
- Assesses facilities, services, technology and operations
- Addresses financial resources and sustainability
- Includes plan to collaborate with other libraries and community partners
- Includes component to evaluate process each year

Technology Plan

- Covers three (3) years
- Goals and strategy for using telecommunications and information technology
- Contains a professional development strategy

Assesses telecommunication services, hardware, and software
includes an equipment replacement schedule
includes a plan for financial resources and sustainability
Contains an ongoing annual evaluation process
Includes an automation plan that conforms to national cataloging standards

This plan, covering three years including the eRate budget year, must be approved and on file with the Indiana State Library in order to apply for and receive the eRate discount on Internet lines. For additional information see Chapter 10 on eRate. You are still required to submit a technology plan even if you do not apply for federal eRate funding.

Collection Development Policy

Personnel Policy and Procedures

See *Accounting and Uniform Compliance Guidelines Manual for Libraries* 8-1
(could be a part of the personnel policy)

Good resource is *Model Employee Policies for Indiana Employers with Legal Commentary*. 4th edition. Indiana Chamber, 2003. Borrow from Indiana State Library or call Indiana Chamber at 1-800-824-6885 for pricing.

- (1) Employment practices, such as:
 - i. Recruitment
 - ii. Selection
 - iii. Appointment
- (2) Personnel actions
- (3) Salary administration
- (4) Employee benefits
- (5) Conditions of work
- (6) Leaves

Principles of Access/Circulation Policy, Including a Fines and Fees Policy

See *Accounting and Uniform Compliance Guidelines Manual for Libraries*
1-3

Disaster Recovery Plan for Computer Systems

See *Accounting and Uniform Compliance Guidelines Manual for Libraries*
5-4

Internet Acceptable Use Policy

- IC 36-12-1-12 – Must be reviewed annually and must address the appropriate use of the Internet or other computer network by library patrons in all areas of the library

For libraries receiving the eRate discount, or LSTA grants, the policy must also be an Internet Safety Policy and after providing reasonable notice and holding at least one public meeting, the library must approve a policy that addresses the following:

- access by minors to inappropriate content on the Internet and World Wide Web
- the safety and security of minors when using electronic mail, chat rooms, and other forms of direct electronic communications
- unauthorized access, including hacking, and other unlawful activities by minors online
- unauthorized disclosure, use, and dissemination of personal identification information regarding minors
- measures designed to restrict minors' access to materials harmful to minors

Children's Internet Protection Act (CIPA) and Neighborhood Children's Internet Protection Act (N-CIPA) (PL 106-554)

Investment Policy

IC 5-13-7-7, see *Accounting and Uniform Compliance Guidelines Manual for Libraries* 9-14

Moving and Interview Expense Policy

IC 36-12-2-24(c), see *Accounting and Uniform Compliance Guidelines Manual for Libraries* 8-4 (Could be a part of the Personnel policy)

Purchasing Policy

IC 5-22-3-3, see *Accounting and Uniform Compliance Guidelines Manual for Libraries* (Small Purchase Policy-under \$50,000) 10-7

Records Excepted from Disclosure Policy

IC 5-14-3-4, see *Accounting and Uniform Compliance Guidelines Manual for Libraries* 6-4

Travel Policy

See *Accounting and Uniform Compliance Guidelines Manual for Libraries* 8-3 (Could be a part of the Personnel policy)

Personnel Policies Checklist

(Possible topics to cover)

For examples of policies and procedures see the Indiana State Personnel Department webpage <http://www.in.gov/spd/2393.htm>

See also “Chapter 10 Employment Practices, Workers Rights” in this Manual.

1. **Employment-At-Will Disclaimer**
2. **Job Classifications**; full-time and part-time status
3. **Orientation/Trial Period**
4. **Equal Employment Opportunity Statement**
5. **Sexual Harassment Policies**
6. **Work Rules and Disciplinary Policy and Procedures** — common items included may be:
 - excessive absences, tardiness, or early leaves
 - use, possession, actual or intended distribution or being under the influence of drugs, controlled substances, or alcohol
 - insubordination
 - refusal to cooperate with investigation
 - falsification of library records, including the employment application
 - negligent or unauthorized use of library equipment
 - harassment, physical abuse or verbal abuse of employees, patrons, or visitors
 - gambling during working hours
 - theft or unauthorized use or possession of library property or another person's property
 - soliciting or seeking support or contributions during working time for any cause or organization without management approval
 - violation of safety rules or common safety practices
 - failure to make a prompt report of any accident on library property
 - inattention to the job or poor job performance
 - failure to observe library working hours and schedules, including scheduled overtime
 - disclosure of confidential information to unauthorized persons
 - possession of weapons on library property
7. **Hours of Work, Layoff/Recall**
8. **Military Leave**

- 9. **Jury Service**
- 10. **Bereavement Leave**
- 11. **Attendance Policy**
- 12. **Vacation**
- 13. **Holidays**
- 14. **Personal Days**
- 15. **Sick Days**
- 16. **Union-Free Workplace Statement**
- 17. **Open Door Statement** (do not restrict employees from communicating with members of management other than their immediate supervisors)
- 18. **Bulletin Boards** — fosters communication between employees
- 19. **Substance Abuse Policy**
- 20. **Family and Medical Leave Act Policies**
- 21. **Smoking** – can prohibit in facility
- 22. **Dress Code**
- 23. **References** — prevents employer from releasing references that will cause it to be held liable for defamation
- 24. **Promotion/Transfer/Job Openings**
- 25. **Timekeeping Requirements**
- 26. **Health Insurance, Health Savings Accounts, Disability Benefits Programs, Deferred Compensation, and PERF**
- 27. **Confidential Information**
- 28. **Personal Belongings**
- 29. **Employment of Relatives**
- 30. **Safety and Health**
- 31. **Inclement Weather/Emergencies**
- 32. **Telephone** (for customer satisfaction and for employees' personal calls)
- 33. **Internet/E-mail**

- 34. **Employee Examination of Personnel Files** — employer may decide whether employees may review their files or not; documents should not be removed
- 35. **Termination of Employment**
- 36. **Receipt/Acknowledgement** – helps to ensure that the employee has read the handbook

Adapted from a Barnes & Thornburg handout, 1998.

Manuals and Publications **Necessary to the management of** **Indiana Public Libraries**

1. Accounting and Uniform Compliance Guidelines

Manual for Libraries

Reissued 2006, revised yearly, (many times referred to as "Budget Manual"), request copies from State Board of Accounts: 1-317-232-2521. This manual is now on the Internet and can be downloaded:

<http://www.in.gov/sboa/2404.htm>

You can then search the manual using the "find" function of your document program.

2. Handbook on Indiana's Public Access Laws

The revised edition (updated April 2008) is available online, prepared by the Office of the Attorney General and Office of the Public Access Counselor. The new public access counselor, Heather Neal, revised the handbook.

Request copies from the Public Access Counselor, W074, Indiana Government Center South, 402 West Washington Street, Indianapolis, Indiana 46204 or print from the web:

http://www.in.gov/pac/files/pac_handbook.pdf

3. Indiana Library Resource Sharing Manual*

1997

<http://www.in.gov/library/3288.htm>

See Chapter 8 for Interlibrary Loan and Public Library Access Card Program.

4. Indiana Public Library Directory 2011¹⁰⁸

Revisions as needed

<http://www.in.gov/library/files/08dir2col0324.pdf>

<http://www.in.gov/library/pldirectory.htm>

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5. IN The Public Trust: A Reference Manual for Indiana Public Library Board Members

1993 (Trustee Manual), including revisions for 2007

*see the Survival Guide's Chapter 2 – Library Board Information

<http://www.in.gov/library/3274.htm>

6. Library Budget Manual...a Guide Through the Process of Local Government Budgeting

This manual updated May 2010. To purchase the manual, send a request in writing to the attention of Linette Pedigo, Department of Local Government Finance, 100 N. Senate Ave, N-1058(B), Indianapolis, IN 46204. Please enclose a check made payable to the Department of Local Government Finance in the amount of thirteen dollars (\$13.00). You can pick up the manual directly from DLGF office for ten dollars (\$10.00) by calling Linette Pedigo at (317) 234-5592.

<http://www.in.gov/dlgef/4843.htm>

7. Library Laws IC 36-12

Please consult online edition of Indiana Library Laws that contains most up to date information at the following webpage:

www.legislative.ic/code/title36/ar12/index.html

8. Statistics of Indiana Public Libraries

New edition yearly and available on-line only at:

<http://www.in.gov/library/plstats.htm>